

1 **FILED**  
2018 NOV 13 02:23 PM The Honorable Mary E. Roberts  
KING COUNTY Noted for Hearing: November 16, 2018  
3 SUPERIOR COURT CLERK  
E-FILED  
4 CASE #: 15-2-15009-0 SEA  
5  
6

7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
8 FOR KING COUNTY

9 SEATTLE TUNNEL PARTNERS, a  
10 Washington joint venture, WASHINGTON  
STATE DEPARTMENT OF  
TRANSPORTATION,

11 Plaintiffs,

12 HITACHI Zosen U.S.A. Ltd.

13 Intervenor-Plaintiff,

14 v.

15 GREAT LAKES REINSURANCE (UK)  
16 PLC, a foreign insurance company; et al.,

17 Defendants.

No. 15-2-15009-0 SEA

**WSDOT'S REPLY TO HITACHI  
ZOSEN'S RESPONSE TO WSDOT'S  
MOTION FOR SPOILIATION  
SANCTIONS**

18 WSDOT briefly responds to Hitachi's response to WSDOT's motion for spoliation  
19 sanctions.

20 1. WSDOT is in no way required to go along with STP's spoliation of evidence.  
21 STP not only lost or destroyed critical evidence, but also concealed that it had lost or destroyed  
22 this evidence from WSDOT for more than a year. STP has no explanation for the loss or  
23 destruction of the boulders and the Hauser Journal. STP's explanation for Pieces #1, #2, #3, 4,  
24 #7, #8, and #9 is contradictory and incomplete, at best.

25 2. Hitachi's assertion that WSDOT has some obligation to go along with STP's  
26 misconduct merely because it is a co-insured is difficult to understand. WSDOT has no such

WSDOT'S REPLY TO HITACHI ZOSEN'S RESPONSE  
TO WSDOT'S MOTION FOR SPOILIATION SANCTIONS - 1

obligation, particularly where, as here, WSDOT disputes that TW-2 caused damage to the TBM.

3. STP served its Differing Site Condition claim on WSDOT on December 12, 2013, before STP had any evidence that TW-2 damaged the TBM. Goodnight Decl., Ex. Y. Internal STP emails show that STP was looking for evidence that pieces of the now lost or destroyed portions of TW-2 got into the seal system, in which case such evidence would be worth “millions.” Supplemental Declaration of David R. Goodnight, Ex. WW (“The million-dollar question (millions, really) is if at some point, a shard of the pipe could have entered the seal structure, breaking the seals.”). STP never found such evidence. Instead, STP lost or destroyed the various pieces of metal that it wanted to test, and that it promised WSDOT it would test. WSDOT is the innocent party and should not be prejudiced by STP’s misconduct.

4. If the Court finds that STP committed spoliation, the Court has broad discretion in determining an appropriate remedial sanction. *Homeworks Constr., Inc. v. Wells*, 133 Wn. App. 892, 899, 138 P.3d 654 (2006). WSDOT does not oppose a separate hearing on the appropriate sanction to be imposed if it would be helpful to the Court.

DATED this 13th day of November, 2018.

I certify that this reply contains 332 words, in compliance with the Local Civil Rules.

Robert W. Ferguson  
ATTORNEY GENERAL  
STATE OF WASHINGTON

STOEL RIVES LLP

s/Guy W. Bowman  
Guy W. Bowman, WSBA No. 29214  
Assistant Attorney General  
Transportation and Public  
Construction Division  
7141 Cleanwater Drive SW  
PO Box 40113  
Olympia, WA 98504-0113  
Phone: (360) 753-1626

**Attorneys for Plaintiff Washington State  
Department of Transportation**

s/David R. Goodnight  
Karl Oles, WSBA No. 16401  
karl.oles@stoel.com  
David R. Goodnight, WSBA No. 20286  
david.goodnight@stoel.com  
Bart W. Reed, WSBA No. 45005  
bart.reed@stoel.com  
Rachel D. Groshong, WSBA No. 47021  
rachel.groshong@stoel.com  
600 University Street, Suite 3600  
Seattle, WA 98101  
Phone: (206) 624-0900

WSDOT’S REPLY TO HITACHI ZOSEN’S RESPONSE  
TO WSDOT’S MOTION FOR SPOILIATION SANCTIONS - 2

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

1. I am a legal practice assistant employed by the law firm of Stoel Rives LLP, a citizen of the United States, over the age of 18 years, not a party to this matter, and competent to testify herein.

**Attorneys for Plaintiff Seattle Tunnel Partners**

- ☐ hand delivery via legal messenger
- ☐ overnight delivery
- ☐ mailing with postage prepaid
- ☐ e-service from King County ECF system
- ☒ e-mail service per agreement of the parties:  
dkingman@gordontilden.com  
mpierce@gordontilden.com  
gpendleton@gordontilden.com  
jcadagan@gordontilden.com  
gbogusz@gordontilden.com  
mbludorn@gordontilden.com

- ☐ overnight delivery
- ☐ mailing with postage prepaid
- ☐ e-service from King County ECF system
- ☒ e-mail service per agreement of the parties:  
jluciana@dflllegal.com  
sbrutout@dflllegal.com  
jmalloy@dflllegal.com  
dmeridith@dflllegal.com  
jmilller@dflllegal.com  
adelnore@dflllegal.com  
bdavidson@dflllegal.com

☐ overnight delivery  
☐ mailing with postage prepaid  
☐ e-service from King County ECF system  
☒ e-mail service per agreement of the parties:  
hkk@aswblaw.com

**Attorneys for Insurer Defendants**

Michael K. McCormack, WSBA #15006  
Bullivant Houser Bailey PC  
1700 Seventh Avenue, Suite 1810  
Seattle, WA 98101-1397  
Phone (206) 292-8930

- ☐ hand delivery via legal messenger
- ☐ overnight delivery
- ☐ mailing with postage prepaid
- ☐ e-service from King County ECF system
- ☒ e-mail service per agreement of the parties:  
michael.mccormack@bullivant.com

**Attorneys for Insurer Defendants**

Paul T. Sullivan \*  
Christopher L. Troy \*  
Zelle LLP  
161 Worcester Road, Suite 502  
Framingham, MA 01701  
Phone (781) 446-0734  
*\*(Admitted pro hac vice)*

- ☐ overnight delivery
- ☐ mailing with postage prepaid
- ☐ e-service from King County ECF system
- ☒ e-mail service per agreement of the parties:  
psullivan@zelle.com  
ctroy@zelle.com

Dan Millea\*  
Elizabeth Kniffen\*  
Laura W. Bartlow\*  
Rory Zamansky\*  
Dennis C. Anderson\*  
Shannon P. O'Brien\*  
Dee Ann Slinkard\*  
Zelle LLP  
500 Washington Avenue S., Suite 4000  
Minneapolis, MN 55415  
(612) 336-9170  
*\*(Admitted pro hac vice)*

- ☐ overnight delivery
- ☐ mailing with postage prepaid
- ☐ e-service from King County ECF system
- ☒ e-mail service per agreement of the parties:  
dmillea@zelle.com  
ekniffen@zelle.com  
lbartlow@zelle.com  
rzamansky@zelle.com  
danderson@zelle.com  
sobrien@zelle.com  
dslinkard@zelle.com

Matthew Gonzalez\*  
Jennifer A. Hoffman\*  
Zelle LLP  
45 Broadway, Suite 720  
New York, NY 10006  
(646) 876-4400  
*\*(Admitted pro hac vice)*

- ☐ overnight delivery
- ☐ mailing with postage prepaid
- ☐ e-service from King County ECF system
- ☒ e-mail service per agreement of the parties:  
mgonzalez@zelle.com  
jhoffman@zelle.com

Megan Shutte\*  
Zelle LLP  
401 Plymouth Road, Suite 120  
Plymouth Meeting, PA 19462  
(484) 532-5342  
*\*(Admitted pro hac vice)*

- ☐ overnight delivery
- ☐ mailing with postage prepaid
- ☐ e-service from King County ECF system
- ☒ e-mail service per agreement of the parties:  
mshutte@zelle.com

**Attorneys for Intervenor Hitachi Zosen  
U.S.A., Ltd.**

Richard O. Prentke, WSBA #5786  
V.L. Woolston, WSBA #9453  
Nicholas P. Gellert, WSBA #18041  
Perkins Coie LLP  
1201 Third Avenue, Suite 4900  
Seattle, WA 98101  
Phone: 206 359-8000

Lester O. Brown\*  
Perkins Coie LLP  
3150 Porter Drive  
Palo Alto, CA 94303  
*\*(Admitted pro hac vice)*

Vivek Chopra\*  
Jonathan G. Hardin\*  
Perkins Coie LLP  
700 Thirteenth Street NW, Suite 600  
Washington, DC 20005-3960  
*\*(Admitted pro hac vice)*

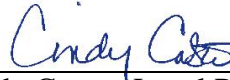
- ☐ hand delivery via legal messenger
- ☐ overnight delivery
- ☐ mailing with postage prepaid
- ☐ e-service from King County ECF system
- ☒ e-mail service per agreement of the parties:  
rprentke@perkinscoie.com  
vwoolston@perkinscoie.com  
ngellert@perkinscoie.com

- ☐ overnight delivery
- ☐ mailing with postage prepaid
- ☐ e-service from King County ECF system
- ☒ e-mail service per agreement of the parties:  
lbrown@perkinscoie.com

- ☐ overnight delivery
- ☐ mailing with postage prepaid
- ☐ e-service from King County ECF system
- ☒ e-mail service per agreement of the parties:  
vchopra@perkinscoie.com  
jhardin@perkinscoie.com

I declare under penalty of perjury under the laws of the State of Washington that the foregoing statements are true and correct.

DATED at Seattle, Washington, this 13th day of November, 2018.



Cindy Castro, Legal Practice Assistant  
Stoel Rives LLP